

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 927 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABULAL NEMCHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

MR ISHVERLAL J NAIK for Petitioner

MR DP JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 17/12/98

ORAL JUDGEMENT

1. Heard Mr. I.J. Naik, learned advocate for the petitioner and Mr. D.P. Joshi, Ld. A.G.P. for the respondents.

2. On 5/10/1998 following order was passed :-

"For and on behalf of the petitioner, the advocate makes a statement across the Bar that

the petitioner shall use the land in question for "village purpose and not for personal purpose". On the statement being made, issue Rule returnable on 6th November, 1998."

This matter has accordingly come up for final hearing before this Court.

2. In this petition under Article 226 of the Constitution of India the petitioner has made grievance about the application of the petitioner moved on or around 15/4/1992 requesting the respondent no. 2 Collector to grant permission for conversion of his land into Gamthal i.e. village site having not been granted. The petitioner also made grievance about the impugned decision dated 28/1/1998 rendered by the 1st respondent, who rejected the petitioner's representation dated 8/9/1997 for converting the petitioner's land into village site.

3. The petitioner's grievance is based upon discriminatory treatment which he feels he has received at the hands of the concerned authority of the respondents in as much as applications of the following persons came to be granted in respect of their respective plots of land/parcels of land :-

- i. Shri Abdulgani Abdulhai Khan
- ii. Shri Abdul Aziz
- iii. Shri Abdul Khalid
- iv. Shri Shahbuddin Ismail
- v. Shri Rahemattullakhan Mohmed Sabli
- vi. Shri Jafar Hussein Abdulhussein Anshari and
- vii. Shri Chimanji Bhagwanji Desai and others.

It is the petitioner's case that similar permission to convert land into Gamthal land was granted in respect of part of the very same original survey no. 360.

4. With a view to meet with the contentions set out in the petition the learned District Magistrate and Collector, Valsad has filed affidavit-in-reply inter-alia stating that the petition deserves to be dismissed on the ground of suppression of material facts. The affidavit proceeds on the assumption that the petitioner has no statutory right to convert his private land into Gamthal land. At this very stage it might be noted that the petition proceeds also on the oral averment to the effect that the land in question is petitioner's private land. It is on this assumption that the learned District Magistrate and Collector has asserted that the Government

converted on two occasions land into Gamthal land, namely firstly on the occasion of application of Shri Abdulgani Abdulhai Khan of Vapi and secondly on the application of Shri Chimanji Bhagwanji Desai of Vapi on the ground of benefit of constructing residential houses on plots of specific area being given when large number of people are benefited for the same since Government has been vested with the power for welfare of large number of people for granting such permission. However, in the present case no such facts are visible before the Government or available in the petition itself. So far as the facts of the petitioner are concerned, it has been asserted by the learned Collector that the petitioner is having family of 6 members, who are having 5658 sq. mtrs. of non-agricultural land with them and they can get 40% of the area for the purpose of construction even if it is not converted into Gamthal land, in which case he could get 100% of built up area. Thus, even on the petitioner's present condition there is no requirement or necessity for granting permission to convert the land into Gamthal land. It has also been contended on behalf of the Government that the petitioner's prayer is not supported by any material on record.

5. In the background of what is stated above, Mr. Naik was called upon to show before this Court evidence concerning the petitioner's title to the land in question. This was for the purpose of verifying whether the petitioner's request could be considered once again by the Government or not. However, except the bare statement of the petitioner there is no material at present available with Mr. Naik. In that view of the matter in case the petitioner needs to have construction in the land in question which is stated to be admeasuring 5658 sq. mtrs., it is clear from the averments made in the affidavit-in-reply that the petitioner can have construction to the extent of 40% of the land which would obviously satisfy the petitioner's need. However, such construction would only be permissible if the petitioner is in a position to produce appropriate evidence before the authority, which can grant permission for making such construction. It is obvious that the petitioner has to satisfy the concerned authority with regard to petitioner's title and then only the petitioner would be in a position to make construction to the extent of 40% after obtaining necessary permission and/or getting plans sanctioned from such authority.

6. Hence, in the facts of this case and in view of what is stated above, this petition is not required to be entertained. Rule is discharged. No order as to cost.

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